IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mathura Lal Mundra v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.5119/2003
under Article 226 of the Constitution of India.

Date of Order : 28th March, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.S.Bhati, for the petitioner.
Mr. Rameshwar Dave, Dy.Govt.Advocate.

BY THE COURT :

The petitioner entered in the services of Government of Rajasthan being appointed as Revenue Patwari w.e.f. 9.1.1961. By an order dated 1.10.1994 the petitioner was placed under suspension by the Collector, Rajsamand contemplating disciplinary proceedings under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958 (hereinafter referred to as “the Rules of 1958”).

A case under Section 3/7 of the Essential Commodities Act was lodged against the petitioner and after regular trial the petitioner was convicted for the offence referred above by a competent court of criminal jurisdiction. A sentence of rigorous imprisonment for a period of three months with a fine of Rs.1,000/- was imposed upon the petitioner by judgment and order dated

6.3.1986. The appeal preferred by the petitioner against the judgment dated 6.3.1986 was also dismissed by the appellate court vide the judgment dated 21.1.1988.

A challenge was given by the petitioner to the judgment dated 21.1.1988 and also to the judgment and order dated 6.3.1986 by way of filing a revision petition before this Court. However, as the petitioner was convicted by a court of competent jurisdiction, the disciplinary authority by an order dated 31.10.1996 while exercising powers under sub-rule(1) of Rule 19 of the Rules of 1958 dismissed the petitioner from services.

The revision petition preferred by the petitioner before this Court came to be accepted by judgment dated 10.9.2002. This Court by judgment dated 10.9.2002 while accepting the revision petition set aside the judgment passed by the appellate court as well as by the trial court and exonerated the petitioner from all the allegations levelled against him for commission of an offence under Section 3/7 of the Essential Commodities Act.

The petitioner after acceptance of the revision petition by this Court submitted a representation to the disciplinary authority i.e. the Collector, Rajsamand to set aside the order dated 31.10.1996 as a consequence of setting aside the judgment of conviction and the order of

sentence by this Court. The petitioner also made a request to reinstate him in services and then to retire him from services w.e.f. 30.4.1999, the day on which he would have acquired the age of superannuation in usual course. The petitioner also claimed back wages and pensionary and other post retiral benefits. No response was given to the representation submitted by the petitioner, hence, this writ petition is filed by the petitioner for redressal of his grievance.

In the instant writ petition the petitioner has sought a direction to give back wages from the date of dismissal and also claimed pension from the date of retirement.

A reply to the writ petition has been filed on behalf of the respondents. In reply it is contended that the representation submitted by the petitioner is under consideration and an appropriate action shall be taken by the competent authority. It is informed to the Court by the counsel for the petitioner that no such action has been taken by the respondents so far. Counsel for the respondents also urged that no relief as prayed can be granted to the petitioner as no challenge is given by the petitioner to the order dated 31.10.1996 whereby he was dismissed from service in exercise of powers under sub-rule(1) of Rule 19 of the Rules of 1958.

The contention of the counsel for the respondents is that the relief claimed by the petitioner is only with regard to grant of back wages and other retiral benefits to him which cannot be given to him without setting aside the order dated 31.10.1996.

I have heard counsel for the parties.

It is true that no challenge is given by the petitioner to the order dated 31.10.1996 passed by the disciplinary authority i.e. the Collector, Rajsamand whereby the petitioner was dismissed from services by exercising powers under sub-rule(1) of Rule 19 of the Rules of 1958. The prayer made in the writ petition reads as under:-

> "A/ By an appropriate writ, order or direction, ghe respondents may kindly be directed to give the petitioner back wages from the date of termination and pension from the date of his completion of retirement age with all consequential benefits with interest.
>
> B/ Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

Though the validity of the order dated 31.10.1996 is not under challenge in prayer clause of the writ petition, but a writ court exercising powers under Article 226 read with Article 215 of

the Constitution of India is having ample power to mould the relief in a petition for writ to impart substantial justice. As a court of plenary jurisdiction the writ court while exercising powers under Article 226 of the Constitution of India is free to adopt its own procedure and to follow that with view to get the ends of justice in circuit. The principles of pleadings are certainly applicable in writ jurisdiction, however, the same cannot be extended to the extent of making them as a hurdle in imparting substantial justice. If sufficient facts are available on record then a writ court exercising its plenary jurisdiction and extra ordinary powers have sufficient authority to wash out an illegality though may not have challenged in specific words by the person aggrieved. A writ court cannot close its eyes and permit an illegality to be perpetuated on the ground that a challenge has not been given to the same in specific terms, specially in the circumstances when the sufficient facts are available on record for adjudication or the question sought to be adjudicated is purely a legal one.

In the present writ petition the relief claimed by the petitioner is dependent to the examination and adjudication of validity of the order dated 31.10.1996. The challenge to this order is given purely on legal question and on basis of the facts admitted by the parties, therefore, the Court can very well examine

validity of the order dated 31.10.1996 in the instant writ petition.

The disciplinary authority has passed the order dated 31.10.1996 while exercising powers under sub-rule(1) of Rule 19 of the Rules of 1958 which is a provision corresponding to clause (a) to proviso (ii) of Article 311(2) of the Constitution of India. The powers under sub-rules (1), (2) and (3) of Rule 19 of the Rules of 1958 are exception to the constitutional right of a civil servant enshrined under Article 311 of the Constitution of India which prescribes that no civil servant can be dismissed, removed or reduced in rank except after an enquiry in which he has been informed the charges against him and without providing a reasonable opportunity of being heard. Procedure to hold enquiry and to provide reasonable opportunity to be heard is given under Rule 16 of the Rules of 1958. A deviation from this procedure can be made in exceptional circumstances as provided under clauses (i), (ii) and (iii) of Rule 19 of the Rules of 1958. The disciplinary authority by order dated 31.10.1996 deviated from normal course on the count that the conduct of the petitioner led to his conviction on a criminal charge and dismissed the petitioner. This conviction of the petitioner is no more in existence in light of the judgment dated 10.9.2002 passed by this Court in revision petition No.26/88. No conviction now stands giving foundation and support to the order dated

31.10.1996. The order dated 31.10.1996 has lost its credil in light of the judgment passed by this Court on 10.9.2002 (Anx.3), as such the order dated 31.10.1996 is non-est in eye of law as it imposes a punishment of dismissal without affording a reasonable opportunity of hearing to the petitioner. The same, therefore, is in violation of Article 311(2) of the Constitution of India and also in violation of Rule 16 of the Rules of 1958.

The petitioner has claimed the back wages for the period he remained under dismissal from services by the force of the order dated 31.10.1996. The order of conviction by the trial court was passed on 6.3.1986. The order passed by the trial court was affirmed by the appellate court by judgment dated 21.1.1988. The disciplinary authority dismissed the petitioner from service by order dated 31.10.1996. The petitioner has stated in para 9 of the writ petition that in normal course if he would have been allowed to continue in service, he would have acquired the age of superannuation on 30.4.1999. As such, back wages claimed by the petitioner are related to the period commencing from 31.10.1996 to 30.4.1999. In this period the order of conviction was in existence as the revision petition preferred by the petitioner before this Court came to be accepted by judgment dated 10.9.2002. The petitioner has not worked during the aforesaid period and in that period the order

passed by the disciplinary authority was holding the field legally as the conviction of the petitioner was in existence. Looking to these peculiar facts and circumstances of the case I am not inclined to direct the respondents to pay back wages to the petitioner pertaining to the period commencing from 31.10.1996 to 30.4.1999. However, the petitioner shall be entitled to get continuity in service uptil the date of his normal superannuation i.e. 30.4.1999.

In view of whatever stated above, the writ petition stands allowed. The order dated 31.10.1996 passed by the Collector, Rajsamand dismissing the petitioner from services exercising the powers under sub-rule(1) of Rule 19 of the Rules of 1958 is hereby quashed. The petitioner shall be treated in continuous services of the respondents till the date he acquired the age of superannuation i.e. 30.4.1999. No back wages are required to be paid to the petitioner for the period commencing from 31.10.1996 to 30.4.1999. However, all other notional benefits shall be given to him and fixation of his pay to be made accordingly. Accordingly the petitioner shall also be entitled for all other pensionary and retiral benefits by treating him retired from services w.e.f. 30.4.1999.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.